

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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Greetings! I have not had a chance to catch my breath and realized I have not gotten the current season's letter out. Here goes. First, I want to give you a real life example of how we do what we do.

Here are the facts. Jane Doe, an Alzheimer's patient, had about \$150,000.00 in cash and, she thought, 300 acres of land. Her family came in to see me about 4 years ago. For whatever reason, they did not hire me to protect assets. Only very recently, when the cash was down to about \$3000.00 did they come in for the purpose of seeing if anything could be done to protect the farm. I learned that the farm had been inherited by Jane's husband, John, many years ago. John died about 5 years ago. While John had a Will that left everything to Jane, IT WAS NOT PROBATED! (And if a Will is not probated, it has no legal effect – might as well be a piece of toilet paper). An affidavit of heirship was instead prepared by someone and filed. When an affidavit of heirship is filed, it basically says “John died without a Will and his estate is to pass to his “heirs at law” by “intestate succession”. Well guess what? As a result of John's Will not being probated (remember it would have left all of the property to Jane), his estate passed by the “law of intestate succession” and, because the farm was John's separate property (he inherited it) the result is that Jane only got a “life estate” in one-third of the farm (meaning she would only be entitled to one-third of the income from the farm –and the farm is not producing income at this time) and her two children received by intestate succession the farm! This is an example of what was A VERY GOOD OUTCOME AS A RESULT OF JOHN'S WILL NOT BEING PROBATED! You can't bank on this being the result in most cases, but it sure worked out in this one case. But, there could have been an even better result if she had hired us back 4 years ago when she had the \$150K cash. We could have developed an asset protection plan that would also have protected about \$75,000.00 cash (in addition to the farm). Oh well! That's the way the cookie crumbles!!

An update on the “Ladybird deed”. We have talked about this in prior newsletters. Someone is going into a nursing home (a single person). They are told that when they die, the State of Texas has a right to file a claim against their estate and that can result in having to sell the homestead when they die to pay

back the State of Texas for the Medicaid services that were provided. This is known as the “Medicaid Estate Recovery Program” (MERP). We have successfully used what is known as a “Lady bird Deed” to avoid this catastrophic result (basically the single person entering the nursing home, signs the “Lady bird Deed” that transfers a “remainder interest” in the home to the children (or other beneficiary) and retains a “super life estate” over the property. At death of the nursing home resident, the homestead would pass outright to the beneficiaries free of MERP. **Unfortunately, there is a now a bill that is pending in the state legislature (HB 703) that, if passed, could have a negative impact where Ladybird deeds are involved.** This new law would allow a nursing home resident and, let's say an adult child, to take title to property under a “**TRANSFER ON DEATH DEED**” - so that when one person dies, the other automatically owns the property (much like a joint account with right of survivorship) which, at first blush, sounds great. But it's not because the proposed legislation would say that under the Transfer on Death Deed law, if the estate of the decedent (read this as “nursing home resident who has died”) is not sufficient to pay debts, a court proceeding can be brought to enforce liability (ie: they could get the homestead!). Will this “transfer on death deed” necessarily make “ladybird deeds” ineffective? Not necessarily, but title companies may get very nervous when a “ladybird deed” is involved in determining whether or not to insure title. **I am not recommending that clients revoke or cancel lady bird deeds – not at all-- because this still remains the best approach for avoiding MERP.** But I am wanting to let you know of this “pending legislation” that could negatively impact Ladybird deeds if it is passed. **It wouldn't be a bad idea to let your representative know that you oppose HB 703 a/k/a “Transfer on Death Deed”.**

Another potential problem for folks seeking Aid and Attendance (VA Pension). For folks who want to file for Veteran's Aid and Attendance (A&A), in the past they could make a gift to their family members, and, without penalty, in many cases become immediately eligible for A&A (assuming the myriad of other criteria were met). As we have discussed in prior newsletters, under Medicaid there

is a 5 year "lookback" on gifts (a period of time where the applicant is ineligible for Medicaid). **This new proposed VA rule would establish a similar 3 year "lookback" transfer penalty for gifts when A&A is applied for.**

An unasked for "plug" for a mechanic who has a great reputation! There is a mechanic, Freddy, owner of Freddy's garage, 200 Ohio St. (downtown) who I have heard great things about from two district court judges at the courthouse. I went by to meet him and was impressed. I was also impressed that he, at no

charge, inspected a pickup truck for an older gentlemen that we helped with a mobile home purchase (and helped on a pickup purchase). Freddy and his mechanics checked the truck over from stem to stern at no charge. I intend to use him for work in the future.

That's it for now! Hope you enjoy the rest of Winter!

Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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